

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Jennifer Marie Cavalier  
Penner, d/b/a Executive Appraisal  
Services and JP Appraisals

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Eric L. Lipman on December 21, 2007, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of, Jennifer Marie Cavalier Penner, Executive Appraisal Services or JP Appraisals (Respondent). Following a post-hearing submission from the Department on December 26, 2007, the hearing record closed.

**STATEMENT OF THE ISSUES**

1. Whether the Respondent, by performing unlicensed real estate appraisals, violated Minn. Stat. § 82B.03, subd. 1(a), (b) and (c) (2006)?
2. Whether the Respondent, by engaging in acts or omissions that involve dishonesty, fraud or misrepresentation, violated Minn. Stat. § 82B.20, subd. 2 (4) (2006)?
3. Whether the Respondent, by her acts after July 9, 2007, has demonstrated herself to be an untrustworthy applicant or licensee, and subject to regulatory discipline under Minn. Stat. § 45.027, subd. 7(4) (2006)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On November 2, 2007, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to the following address: 5645 Irving Avenue South, Minneapolis, MN 55410.<sup>[1]</sup> The Notice of and Order for Hearing indicated

that a Prehearing Conference would be held in this matter on December 21, 2007.<sup>[2]</sup>

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

....

Pursuant to Minn. Stat. § 45.027, subd. 6 (2006), Respondent(s) may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent(s) violated any law, rule or order.<sup>[3]</sup>

3. No one appeared at the December 21, 2007 hearing on behalf of Jennifer Marie Cavalier Penner, Executive Appraisal Services or JP Appraisals. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Jennifer Marie Cavalier Penner, Executive Appraisal Services or JP Appraisals.

4. The Statement of Charges alleges that:

- (a) The Respondent was formerly licensed as a real estate appraiser by the Department. By Consent Order dated July 9, 2007, the Commissioner revoked the Respondent's real estate appraiser's license and imposed a \$7,000 civil penalty.
- (b) On July 31, 2007, the Department received a complaint from Melissa Zuniga, a licensed real estate appraiser. Respondent was Ms. Zuniga's former supervisor. The Department's investigation revealed that, despite the July 9, 2007 revocation order, the Respondent continued to prepare and sign appraisals.
- (c) On October 4, 2007, the Department received a telephone call from Dorothy Lim with Countrywide Credit Risk Management Department. Ms. Lim stated that she had checked the Department's website, license lookup function, and learned that Respondent's appraiser license had been revoked effective July 9, 2007. Ms. Lim informed the Department that she had, in her possession, an appraisal dated September 19, 2007. This appraisal request was

submitted to Respondent by Grandview Home Loans, LLC and the appraisal was signed by Respondent on September 19, 2007, despite the July 9, 2007 revocation order. Upon further investigation, the Department learned that Grandview Home Loans, LLC requested from Respondent at least two additional appraisals that Respondent signed on August 7, 2007 and August 8, 2007, despite the July 9, 2007 revocation order.

- (d) The Department's investigation further revealed that Respondent had been issuing appraisal reports with the unauthorized use of Ms. Zuniga's signature as the responsible appraiser. Respondent also used the signature and license number of Ms. Zuniga's brother, Michael Curry. Respondent prepared appraisals containing false signatures both prior to and after her license revocation.

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 82B.07.

2. Respondent received notice of the charges against her and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of her failure, without the ALJ's prior consent, to appear at the scheduled pre-hearing conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original and amended statement of charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the statement of charges, Respondent, by performing unlicensed real estate appraisals, violated Minn. Stat. § 82B.03, subd. 1(a), (b) and (c) (2006).

6. Based upon the facts set forth in the statement of charges, Respondent, by engaging in acts of dishonesty, fraud and misrepresentation, violated Minn. Stat. § 82B.20, subd. 2 (4) (2006).

7. Based upon the facts set forth in the statement of charges, it cannot be deemed as true that the Respondent is an applicant or licensee subject to regulatory discipline under Minn. Stat. § 45.027, subd. 7(4) (2006).

8. The imposition of disciplinary sanctions against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that regulatory action be taken against Jennifer Marie Cavalier Penner, d/b/a Executive Appraisal Services or JP Appraisals.

The undersigned recommends that discipline be imposed upon Counts I and II of the Statement of Charges; but, as detailed in Conclusion No. 7 and the Memorandum below, the Commissioner should refrain from imposing discipline under Count III of the Statement of Charges.

Dated: January 15, 2008

s/Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

Reported: Digital Recording  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, or call the Department at (651) 651-296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under

Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

Notwithstanding Ms. Penner's earlier default, the Administrative Law Judge writes separately to detail the bases for the recommendation that Commissioner limit his regulatory responses to Counts I and II of the Statement of Charges.

The statute that authorizes the Commissioner to sanction demonstrated acts of untrustworthiness among persons "subject to the duties and responsibilities entrusted to the commissioner," states:

In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that:

- (1) the order is in the public interest; and
- (2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or
- (3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or
- (4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.<sup>[4]</sup>

This Office has earlier-determined (and a predecessor Commissioner apparently agreed), that regulatory discipline for "untrustworthiness" under section 45.027, subd. 7 (a) (4) should be limited to those persons who are both "subject to the duties and responsibilities entrusted to the commissioner" and a current licensee or applicant for licensure. As Judge Beck explained:

Respondent's argument that Minn. Stat. § 45.027, subd. 7(a)(4), is inapplicable to him because he is neither an applicant nor a licensee has merit. Minn. Stat. § 45.027, subd. 7(a)(4), states that the Commissioner may take disciplinary action against the authority or license of a person if the person has engaged in an act that demonstrates that "the applicant or licensee" is untrustworthy or otherwise incompetent or unqualified to act under the authority granted by the Commissioner. Mr. Pomrenke is neither an applicant nor a licensee. Although it is likely that this provision's limitation to applicants and licensees is simply the result of inartful drafting on the part of the legislature, particularly given the otherwise broad definitions of persons subject to the Commissioner's authority found at Minn. Stat. §§ 58.12, 58.13, and 45.027, subd. 7, it nevertheless renders Minn. Stat. § 45.027, subd. 7(a)(4) inapplicable to Respondent. Accordingly, the ALJ finds that the Department failed to establish that the Respondent violated Minn. Stat. § 45.027, subd. 7(a)(4).<sup>[5]</sup>

Because the Statement of Charges details that Ms. Penner's real estate appraiser license was revoked on July 9, 2007, and does not support a claim that she is currently an applicant for a license or a licensee, Ms. Penner is not subject to regulatory discipline under section 45.027, subd. 7(a)(4). Any discipline imposed upon Ms. Penner, therefore, should be grounded upon violations of the broader real estate appraiser practice provisions of Chapter 82B.<sup>[6]</sup>

### **E.L.L.**

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<sup>[1]</sup> See, Default Affidavit of Jean-Anne Gates (December 24, 2007).

<sup>[2]</sup> Notice and Order for Hearing, at 1.

<sup>[3]</sup> Notice and Order for Hearing, at 4, ¶ 1 and 6, ¶ 10.

<sup>[4]</sup> Minn. Stat. § 45.027, subd. 7(4) (2006).

<sup>[5]</sup> *In the Matter of Daniel J. Pomrenke*, OAH Docket No. 1-1003-14788-2 (2002) (emphasis added) (<http://www.oah.state.mn.us/aljBase/100314788.rt.htm>) affirmed, *Pomrenke v. Comm'r of Commerce*, 677 N.W.2d 85 (Minn. App.), review denied (Minn. 2004).

<sup>[6]</sup> Compare, Minn. Stat. § 45.027, subd. 6 with Minn. Stat. §§ 82B.03 and 82B.20 (2006).